

APPEAL NO. 040003
FILED FEBRUARY 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 4, 2003. The hearing officer determined that the respondent's (claimant) compensable injury of _____, includes an injury to the cervical spine; that the claimant had disability from March 18, 2003, through the date of the CCH; and that the appellant (self-insured) did not make a bona fide offer of employment (BFOE) to the claimant.

The self-insured basically appeals on sufficiency of the evidence in support of its position and argues that the hearing officer incorrectly decided the BFOE issue. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, an aircraft assembler, asserts a compensable injury after using a pneumatic "hulk gun" shooting "purple collars" into some metal plates. The claimant described her job in some detail and the hearing officer's Statement of the Evidence summarizes the claimant's testimony. The self-insured apparently has accepted liability for a compensable right shoulder injury. At issue is whether that injury extends to the neck. The self-insured does not contest that the claimant has neck pain but contends that the neck pain is caused by the pain from the shoulder injury radiating to the neck. The claimant, to some extent, contends that her shoulder pain is caused by her neck injury with pain radiating into the shoulder. An MRI shows a 4 mm disc protrusion (sometimes referred to as a herniation) at C5-6 which impinges the thecal sac. EMG studies indicate no electrophysical evidence of cervical radiculopathy. A designated doctor (appointed to determine maximum medical improvement (MMI) and impairment rating) is of the opinion that the claimant is not at MMI. The claimant's treating doctor, a chiropractor, has taken the claimant off work. The carrier's required medical examination doctor believes that the claimant's injury is limited to the right shoulder and is of the opinion the claimant can perform light duty. Based on that opinion, the self-insured sent the claimant an offer of employment. As the self-insured concedes, if the cervical spine is part of the compensable injury, the offer of employment does not constitute a BFOE.

There is an abundance of medical evidence and fairly clearly the doctors have been unable to pinpoint the exact cause of the claimant's problem. The hearing officer summarizes and references some of the medical evidence. Clearly there was conflicting medical evidence presented or medical evidence that could be interpreted differently. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas

Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The factors emphasized by the self-insured in challenging those determinations on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in resolving the issues before him. The hearing officer's decision is supported by sufficient evidence. Nothing in our review of the record reveals that the challenged determinations are incorrect as a matter of law or are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CSC-THE U.S. CORPORATION COMPANY
400 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge